

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

RUSSELL DELEVIE, *
Petitioner, *
vs. * CASE NO. 4:12-CR-15 (CDL)
UNITED STATES OF AMERICA, *
Respondent. *

O R D E R

After a de novo review of the record in this case, the Report and Recommendation filed by the United States Magistrate Judge on June 26, 2019 is hereby approved, adopted, and made the Order of the Court, including the denial of a certificate of appealability.

The Court considered Petitioner's objections to the Report and Recommendation and finds that they lack merit. Specifically, the Court finds that a position taken by the Government in its brief responding to Petitioner's first motion to vacate does not constitute evidence in the sentencing record showing that the sentencing judge relied upon the residual clause when enhancing Petitioner's sentence. And there was no precedent at the time of sentencing that the Georgia burglary conviction only constituted a qualifying crime under the ACCA based upon the residual clause. As noted in the Magistrate Judge's Report and Recommendation,

Petitioner has failed to carry his burden and accordingly his petition must be dismissed.

IT IS SO ORDERED, this 5th day of September, 2019.

S/Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA